

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

GENENTECH, INC.,

Plaintiff,

v.

AMGEN INC.,

Defendant.

C.A. No. 18-924-CFC

**PLAINTIFF GENENTECH, INC.’S UNOPPOSED MOTION TO SEAL D.I.
190, EX. 4**

Pursuant to the September 2, 2020 Report and Recommendation of Special Master Rodney A. Smolla regarding the sealing and redaction of filings in this action (“R&R”), D.I. 558, and the Court’s October 1, 2020 Order adopting the Report and Recommendation, D.I. 560, the parties have been diligently working on preparing a final appendix that:

- (1) identif[ies] those filings that were previously sealed in whole or in part that should now be entirely unsealed;
- (2) identif[ies] those documents previously sealed that are now to be continued to be sealed in their entirety; and
- (3) compile[s] in the one Appendix filing new versions of all documents previously filed entirely under seal or with redactions, in their new form, with the redactions narrowed as approved by the Special Master as listed in the Sealed Appendix, with the appropriate previously sealed or redacted material now public, and the continued and approved material redacted.

D.I. 558 at 16.

In preparing this appendix, Genentech learned that it had inadvertently failed to address one document that was filed under seal, Exhibit 4 to D.I. 190, which is a confidential Genentech PowerPoint presentation that discusses Genentech's contracting strategy. This exhibit contains information confidential and competitively sensitive to Genentech, and should, applying the principles outlined by the R&R, remain under seal. As the R&R explains, Genentech's contracting strategy "is at the core of that type of material that is routinely treated as overcoming the common-law presumption of access" because, by its nature, disclosure "would work palpable competitive harm" to Genentech. D.I. 558 at 10; *see also* D.I. 559 at 64-67 (evaluating Genentech's evidence supporting sealing of contracting strategy documents). Indeed, Genentech submitted excerpts of this same confidential Genentech PowerPoint presentation as Exhibit 36 to D.I. 279, which Genentech addressed in its submissions before Special Master Smolla, and which the Special Master determined should continue to remain sealed. *See* D.I. 559 at 71-72 (evaluating evidence supporting sealing of D.I. 279, Exhibit 36). The Special Master also determined that Genentech had established a basis to seal other documents describing Genentech's contracting strategy. *See* D.I. 559 at 63-76, 80-81 (addressing the sealing of Genentech's pricing and contracting materials in D.I. 276, 277, 279, 280, 281, 290); *see also* D.I. 558 at 14-15 (describing materials to be sealed, including documents reflecting "pricing and discount strategy").

Genentech apologizes for having missed this document as part of its submissions to the Special Master. Genentech's omission of Exhibit 4 to D.I. 190 from its submissions to the Special Master was not intentional; rather, as the R&R recognized, it was due to the fact that "this litigation has been expansive, and the mechanics of executing the operational directives of this Report and Recommendation are fraught with the potential for inadvertent error." D.I. 588 at 15.

For these reasons, and for all of the same reasons articulated by the R&R, Genentech requests this one additional exhibit remain under seal. Genentech has consulted with Amgen, which does not oppose this motion.

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